

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIN SAFIER, on behalf of)
himself and those similarly)
situated)
Plaintiff(s),)
v.)
WESTERN DIGITAL CORPORATION,)
Defendant(s) .)
_____)

No. C05-3353 BZ

**FINAL JUDGMENT APPROVING
SETTLEMENT AND DISMISSAL
WITH PREJUDICE**

WHEREAS, proceedings regarding the proposed settlement of the above-referenced case ("Litigation") have been regularly conducted before this Court, the Honorable Bernard Zimmerman presiding; and

WHEREAS, on March 17, 2006, this Court, following a public hearing and after reading and considering the proposed Settlement Agreement and listening to and considering the arguments of counsel for the parties, preliminarily approved the Class for purposes of settlement and ordered that notice of the proposed settlement be directed to Class Members ("Preliminary Approval Order"); and

1 **WHEREAS**, on June 14, 2006, a Settlement Hearing was held
2 in this Court to consider the fairness, reasonableness, and
3 adequacy of the proposed settlement, and to consider any
4 objections to the settlement; and

5 **WHEREAS**, the Court has reviewed and considered the
6 executed Amended and Restated Class Action Settlement
7 Agreement and its related exhibits dated March 7, 2006
8 ("Agreement") between the parties, argument of counsel for the
9 parties in support of the proposed settlement, and all
10 comments and objections received regarding the proposed
11 settlement, good cause appearing, **IT IS HEREBY ORDERED,**
12 **ADJUDGED AND DECREED AS FOLLOWS:**

13 1. The Court, for the purposes of this Final Judgment,
14 adopts and incorporates by reference the definitions set forth
15 in Section 4 of the Agreement. Unless otherwise defined, all
16 terms used herein shall have the same meaning as set forth in
17 the Agreement.

18 2. The Court has subject matter jurisdiction over all
19 claims of all Class Members asserted in the Litigation and
20 personal jurisdiction over the Plaintiff, the Class Members,
21 and Defendant.

22 3. The Court finds for purposes of settlement only that
23 the prerequisites for a class action under Fed. R. Civ. P.
24 23(a) and (b) (3) and California law have been met in that: (a)
25 the number of Class Members is so numerous that joinder of
26 all members thereof is impracticable; (b) there are questions
27 of law and fact common to the Class; (c) the claims of the
28 named representative are typical of the claims of the Class he

1 seeks to represent; (d) Lead Plaintiff Orin Safier will fairly
2 and adequately represent the interests of the Class; (e) the
3 questions of law and fact common to the members of the Class
4 predominate over any questions affecting only individual
5 members of the Class; and (f) a class action is superior to
6 other available methods for fair and efficient adjudication of
7 the controversy.

8 4. Based on the foregoing findings, the Court finds
9 that there is a well-defined community of interest among the
10 Class Members and certifies the following Class:

11 **All persons and entities who purchased in the United**
12 **States an Aftermarket Western Digital Corporation**
13 **hard disk drive from March 22, 2001 to February 15,**
14 **2006. Excluded from the Class are Western Digital**
15 **Corporation, its directors, officers, and employees;**
16 **Judge Bernard Zimmerman and the members of his**
17 **immediate family; and all persons who timely and**
18 **validly request exclusion from the Class in**
19 **compliance with the requirements of the Class**
20 **Notice.**

21 5. The Court reaffirms its Preliminary Approval Order
22 and finds that the Notice given to the Settlement Class of the
23 pendency of this Litigation and of this settlement constituted
24 the best notice practicable under the circumstances to all
25 persons within the definition of the Settlement Class, and
26 fully complied with the requirements of due process and all
27 other applicable laws.

28 6. The Court approves the settlement as set forth in the
Agreement as fair, reasonable, and adequate to the Class
Members.

7. Defendant is therefore **ORDERED** to do the following:

a. Within five (5) days of the Effective

1 Date, as that term is defined in the
2 Agreement, include language that is
3 substantially similar to the following on
4 its website and, as soon as its current
5 packaging supply has been depleted, but no
6 later than six (6) months following the
7 Effective Date, on its product packaging:

8 **1 gigabyte (GB) = 1 billion bytes. Total**
9 **accessible capacity varies depending on**
10 **operating environment."**

11 b. Within five (5) days of this Final
12 Judgment, provide Notice to registered
13 purchasers for whom Defendant maintains an
14 email or mail address that the Settlement
15 has been approved and instructions on how
16 to submit the Claim Form.

17 c. Within five (5) days of the Effective
18 Date, make the Software available for
19 download for a ninety (90) day period to
20 all Class Members who successfully
21 completed a Claim Form prior to the
22 expiration of the Claims Period.

23 8. The terms of the Settlement Agreement and of this
24 Final Judgment shall be forever binding on Plaintiff and all
25 Class Members (except those persons listed on Attachment 1 who
26 have timely elected to be excluded from the Class) as well as
27 their heirs, executors, and administrators, successors, and
28 assigns, and those terms shall have res judicata, collateral

1 estoppel, and all other preclusive effect in all pending and
2 future claims, lawsuits or other proceedings maintained by or
3 on behalf of any such persons.

4 9. Plaintiff and all Class Members (except those persons
5 listed in Attachment 1 who have timely elected to be excluded
6 from the Class) shall, by operation of this Final Judgment, be
7 deemed conclusively to have fully, finally, and forever
8 irrevocably released, relinquished, and discharged with
9 prejudice the Released Parties from any and all liabilities,
10 claims, cross-claims, causes of action, rights, actions,
11 suits, debts, liens, contracts, agreements, damages,
12 restitution, disgorgement, costs, attorneys' fees, losses,
13 expenses, obligations, or demands, of any kind whatsoever,
14 whether in arbitration, administrative, or judicial
15 proceedings, whether as individual claims or as claims
16 asserted on a class basis or on behalf of the general public,
17 whether known or unknown, suspected or unsuspected,
18 threatened, asserted, or unasserted, actual or contingent,
19 liquidated or unliquidated, whether under federal statutory
20 law, federal common law, federal regulation, or the statutory
21 or common laws or regulations of any and all states or
22 subdivisions, to which res judicata would apply if the
23 Litigation had been litigated to a complete and final
24 judgment. Plaintiff and all Class Members (except those
25 persons listed in Attachment 1 who have timely elected to be
26 excluded from the Class), shall not commence, institute or
27 prosecute, in any capacity, or cause to be commenced,
28

1 instituted or prosecuted, any action or proceeding in any
2 court or tribunal that involves or asserts any of the Released
3 Claims against the Released Parties, or any of them.

4 10. Defendant and its agents, successors, heirs, and
5 assigns shall, by operation of this Final Judgment be deemed
6 conclusively to have fully, finally, and forever irrevocably
7 released, relinquished, and discharged with prejudice the
8 Class Representative from any and all liabilities, claims,
9 cross-claims, causes of action, rights, actions, suits, debts,
10 liens, contracts, agreements, damages, restitution,
11 disgorgement, costs, attorneys' fees, losses, expenses,
12 obligations, or demands, of any kind whatsoever, whether in
13 arbitration, administrative, or judicial proceedings, whether
14 known or unknown, suspected or unsuspected, threatened,
15 asserted, or unasserted, actual or contingent, liquidated or
16 unliquidated, whether under federal statutory law, federal
17 common law, federal regulation, or the statutory or common
18 laws or regulations of any and all states or subdivisions, for
19 malicious prosecution or costs. Defendants and its agents,
20 successors, heirs, and assigns, shall not commence, institute
21 prosecute, in any capacity, or cause to be commenced,
22 instituted or prosecuted, any action or proceeding in any
23 court or tribunal that involves or asserts any such claims
24 against the Class Representative or his counsel.

25 11. The Court reserves exclusive and continuing
26 jurisdiction over the Litigation, the Plaintiff, the
27 Settlement Class, and the Defendant for the purposes of
28

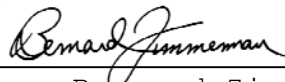
1 supervising the implementation, enforcement, construction, and
2 interpretation of the Agreement, the Preliminary Approval
3 Order, and this Final Judgment.

4 12. The Agreement and this Final Judgment are not
5 admissions of liability or fault by the Defendant, or a
6 finding of the validity of any claims in the Litigation or any
7 wrongdoing or violation of law by Defendant. The Agreement
8 and settlement are not a concession by the Parties. Neither
9 this Final Judgment, nor the Agreement, nor any of their terms
10 or provisions, nor any of the negotiations or proceedings
11 connected with them, nor any actions required to be performed
12 by this Final Judgment or the Agreement, shall be offered as
13 evidence or received in evidence in any pending or future
14 civil, criminal, or administrative action or proceeding,
15 except in a proceeding before this Court to consummate or to
16 enforce the Agreement or Final Judgment, or defend against the
17 assertion of the Released Claims, or as otherwise required by
18 law.

19 13. The Litigation, and all claims contained therein, as
20 against Defendant is dismissed on the merits and with
21 prejudice to the Plaintiff and all Class Members (except those
22 persons listed on Attachment 1 who have timely elected to be
23 excluded from the class).

24 **IT IS SO ORDERED.**

25
26 Dated: June 15, 2006



27 Bernard Zimmerman
28 United States Magistrate Judge

LIST OF PERSONS EXCLUDED FROM THE SETTLEMENT CLASS IN SAFIER V. WESTERN DIGITAL CORP. - C05-3353 BZ:

1. Bryce Albright
2. Willie L. Austin Jr.
3. Helen E. Babcock
4. Dave Benner
5. Jeff Brodhead
6. Richard C. Brown
7. Curt Choo-Kang
8. Scott Craig
9. Chris Dellheim
10. Stephen Fonnesbeck
11. Marlin Gardner
12. Jason Hetu
13. Jeff Jones
14. Jay Kloss III
15. Gerald A. MacDougall
16. Janet K. Morrison
17. Bobbie Piety
18. Robert Seaman
19. Bert Sommerman
20. Mo Weathers
21. Kevin R. Wilson

ATTACHMENT 1

LIST OF PERSONS EXCLUDED FROM THE SETTLEMENT CLASS IN SAFIER V. WESTERN DIGITAL CORP. - C05-3353 BZ:

1. Bryce Albright
2. Willie L. Austin Jr.
3. Helen E. Babcock
4. Dave Benner
5. Jeff Brodhead
6. Richard C. Brown
7. Curt Choo-Kang
8. Scott Craig
9. Chris Dellheim
10. Stephen Fonnesbeck
11. Marlin Gardner
12. Jason Hetu
13. Jeff Jones
14. Jay Kloss III
15. Gerald A. MacDougall
16. Janet K. Morrison
17. Bobbie Piety
18. Robert Seaman
19. Bert Sommerman
20. Mo Weathers
21. Kevin R. Wilson

ATTACHMENT 1